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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/708,514	11/09/2000	Tsuyoshi Kitahara	Q61721	1708
7590 09/13/2004			EXAMINER	
Sughrue Mion Zinn MacPeak & Seas 2100 Pennsylvania Avenue N W Washington, DC 20037-3213			BROOKE, MICHAEL S	
			ART UNIT	PAPER NUMBER
			2853	

DATE MAILED: 09/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/708,514

Applicant(s)

KITAHARA, TSUYOSHI

Examiner

Michael S. Brooke

Art Unit

2853

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 12 July 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-54 is/are pending in the application.
- 4a) Of the above claim(s) 5-53 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 3, 4 and 54 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Election/Restrictions*

Applicant's election with traverse of Species 1 in the reply filed on 07/12/04 is acknowledged. The traversal is on the ground(s) that an undue burden on the Examiner does not exist because several actions are already been issued. This is not found persuasive because the MPEP does not place any limitation on when a restriction may be issued. Furthermore, since a species is by definition an independent and distinct invention, the existence of more than one species in an application inherently imposes an undue burden on the Examiner. That the Examiner does not recognize the existence of multiple species until late in the prosecution does prevent a restriction from being issued.

Claim 7 is withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 07/12/04.

Claims 5, 6, and 8-53 are continued to be withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 10.

This application contains a claim drawn to an invention nonelected with traverse in the Paper filed on 07/12/04. A complete reply to the final rejection must include

cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Nakamura et al (JP 08-187868).**

Nakamura et al discloses all features of the claimed recording head as follows:

- A pressure producing device (11)
- A plate-shaped member having a partition wall (3) defining a pressure chamber (4), and ink supply passage (5) and a common ink storage chamber (6)
- The plate-shaped member having a land (9) and an elastic and deformation portion surround the land (clearly illustrated in Figure 2)
- A nozzle plate (1) provided with a nozzle hole (2)
- The plate-shaped member having a first layer (the one forming 3), a second layer (the one forming 9), and an intermediate polymer layer (8)

- Note: the processes recited in the claims are not further limit the apparatus because it does not further define any structure of the claimed apparatus.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 3, 4, 54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nakamura et al in view of Usui et al (US 6,158,847).**

Nakamura et al discloses the basic limitations of the claimed invention as set forth above and further includes the followings:

- A first adhesive (21) layer bonding the second layer (9) and the intermediate layer (8) and the first layer being formed of stainless steel.

However, Nakamura et al does not disclose:

- A second adhesive layer bonding the first layer (3) and the intermediate layer (8) and the first layer being formed of stainless steel.

Nevertheless, Usui et al discloses:

- An adhesive layer (7) bonding a stainless steel layer (1) forming a spacer likes the first layer and the diaphragm (5).

It is noted that Nakamura et al's diaphragm (7) includes the intermediate layer (8) having a surface facing the first/spacer layer (3). Such surface is similar to the surface of Usui et al's diaphragm (5). It would have been obvious to one having ordinary skill in the art at the time the invention was made to include an adhesive layer between the first/spacer layer and the surface of the diaphragm facing the first/spacer layer as taught by Usui et al in the teaching of Nakamura et al for the purpose of bonding the diaphragm to the spacer layer.

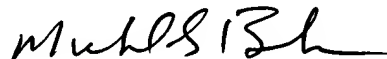
### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael S. Brooke whose telephone number is 571 272-2142. The examiner can normally be reached on M-F 5:30-2:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stephen Meier can be reached on 571 272-2149. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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09/07/04